A

DIALOGUE

ON THE

PRINCIPLES

OF THE

CONSTITUTION, &c.

A

DIALOGUE

ON THE

PRINCIPLES

OF THE

CONSTITUTION

AND

LEGAL LIBERTY,

COMPARED WITH

DESPOTISM;

APPLIED TO THE

AMERICAN QUESTION;

AND THE

PROBABLE EVENTS OF THE WAR,

WITH

Obſervations on ſome important Law Authorities.

JUSTICE AND HUMANITY ARE THE HIGHEST INTERESTS OF A STATE; AND THE PURSUIT OF THEM, ITS NOBLEST EFFORT.

This England never did nor never ſhall
Lie at the proud foot of a Conqueror,
But when itſelf did help to wound itſelf.
"Let unity and peace" come home again;
Come the three quarters of the world in arms,
And we ſhall ſhock them.—Nought can make us rue,
If England to itſelf do reſt but true. SHAKESPEARE.

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ERRATA.

Motto, l. 5, *dele* to.—P. 5, *for* Europe *read* Corcyra.—P. 17, *at the top for* Phil. *read* Arist. *and so change reciprocally for the six next paragraphs.*—*Dele* Phil. *before the words* Can any other.—P. 48, *read* I do not know much of the sentiments of those out of the house as to America.—P. 54, l. 5, *read* ruin.—P. 78, *for* souby *read* soubz.—P. 82, *after* contrary. *dele full point and place* , ——P. 90, l. 2, *after* is *insert* his.——P. 90, *after* cited *put*)——P. 53, *dele* the Parliament when it shall have served ; *and corrige* if ever it shall have served.

A

DIALOGUE, &c.

Ariſtocraticus.

WHEN rebellious Colonies are riſing againſt the parental authority of the mother ſtate, when they are oppoſing by arms the ſupremacy of the Britiſh Parliament, when they are ingratefully repaying our care, our immenſe coſts, our wars in their defence, with tumult, diſloyalty, and treaſon; when they affect independence; when they league in unnatural aſſemblies, and a mock legiſlation, in defiance of all order, juſtice, and good government; are we to ſit patient for ever till they invade us here, till they burn our fleet in the Channel or in the

Thames, and fire our towns, and inveſt the metropolis, the palace, and violate that Majeſty in perſon whoſe laws and authority they have ſo long and ſhamefully inſulted; or ſhall we, in ſpite of intereſted, diſcontented, fooliſh clamours, in ſpite of a ridiculous and diſorderly reſiſtance, act with a vigour that becomes the dignity of Great Britain, her immenſe reſources, the might of her invincible fleet, the irreſiſtible bravery of her troops, and conduct of her generals: thoſe generals and thoſe troops who have traverſed the world with victory; and ſhall not that arm which has ſubdued the power and haughtineſs of two of the moſt formidable monarchies in Europe united againſt her, chaſtiſe the mad inſurrections of her infatuated provinces, who owe all their ſtrength to the power they reſiſt, and who muſt learn that duty by force, which they will not otherwiſe be taught!—This was the language of *Ariſtocraticus* in a converſation between him and *Philodemus*; no matter

matter where, nor the time or place. And *Philodemus* replied:

Phil. A man who is pre-poſſeſſed on the other ſide, would perhaps ſay, not with any force to be ſure, but with a little plauſibility, that the parental authority is for comfort and ſupport, not terror and cruelty; that the ſupremacy of Parliament was veſted in them for the liberty of the people, not for their oppreſſion; for their ſecurity, not their deſtruction: that if the expences, wars, and care were for the ſake of the Colonies, we ſhould permit them to be grateful, by leaving them ſomething they might call their own: that tumult, diſloyalty, and treaſon, were harſh names; but that there was neither diſloyalty in their hearts, nor treaſon in their actions; that they took up their arms unwillingly, and ſhould lay them down with pleaſure when they had done juſtice to the conſtitution, of which they were co-heirs with us; and, far from a deſign to invade, wiſhed ardently

for the time when they might, as formerly, ſight only in the cauſe of Britain, and for the common liberty, glory, and ſafety; and that, if the danger may come home, ſuppoſing we ſhould drive them to deſpair, as I think nothing more probable that that it will; nor any picture of the horrors of ſuch a war at our doors, too exaggerated; is it not proper for their ſakes, and our own too, for the peace, ſafety, and honour of our king and country, to conſider, whether it be certain, that in juſtice and in honour, we are bound to refuſe, and riſque the driving of them to theſe lengths?

Ariſt. Can you doubt it in loyalty or juſtice?

Phil. If they think it injuſtice and diſloyalty to ſupport the claims of the American Colonies, let them learn, that every Colony while it is well treated, honours the mother ſtate; but when injured is alienated; for not to be ſlaves were they ſent forth,

forth, but to be like thoſe who are left behind*.

This is the language of a people two or three thouſand years ago; it is now the language of America; and if it is the voice of truth, I am afraid it muſt ſpeak the ſame for ever. I am not enquiring whether Europe had an equal right to hold this language; a better right they could not well have. I will only offer a few parting words, and if no ſpeedy change of meaſures (for men without that will ſignify nothing) does at length take place, I muſt ſit down in ſilence, and mourn over the ruins of my country: with this bitter conſolation, that we have made them for ourſelves.

Ariſt. But, Sir, why ſo angry, unleſs you mean to be eloquent, and alarm us, as moſt orators do, with dangers which exiſt only in imagination.

* Μαζελωσαν, ὡς πᾶσα ἀποικια ἐυ μὲν πάσχουσα, τιμᾷ τὴν μητρόπολιν, ἀδικουμενη δὲ αλλο τριῦται· ἐ γὰρ ἐπὶ τῳ δικαιοι, ἀλλ' ἐπι τῳ ὁμοιοι ειναι τοις λειπομενοις, ἐκπεμπουσι.

Phil.

Phil. I do not mean to be eloquent, unleſs words could rouſe a ſpirit in my countrymen: thoſe whom the actions paſſing before them do not fill with horror and indignation, have my leave to be cool; I am ſure words cannot make them otherwiſe.

Ariſt. What would you do then with words: the people are ſatisfied, the miniſtry is wiſe and vigorous, and fruitful in expedients, and inexhauſtible in ſtrength, and it is quite in vain to ſpend your breath in oppoſition, in favour of a factious, ſenſeleſs, and ingrateful rabble?

Phil. I believe it is in vain, for if eloquence or arguments, authority of men, reaſon, or experience, could have convinced them, they would have been convinced long ago; but I would wiſh to lighten ſome of the abuſe which I find thrown on the Americans, and on thoſe who are called their friends, and who I believe are not their enemies, becauſe they think it inconvenient to become the

enemies

enemies of liberty, and of humanity, and becauſe they think it is the cauſe of theſe, the cauſe of Great Britain, and of mankind.

Ariſt. They think what is for their intereſt, I doubt my friend, and bawl and bellow for liberty, and yell out black and bitter days! to be huzza'd by the mob, and finally to get a place.

Phil. If acrimony of language were a proof of guilt, the champions of government have condeſcended to beſtow that proof moſt plentifully on the friends of America, which is now, I ſuppoſe, a name of ignominy, as well as on their American brethren: they will pardon me for calling them their brethren, and I hope ſo will America.

Ariſt. You are pleaſed to be ſatirical, but America ſeems tired of the relation, and I doubt will force Great Britain in a little while to diſown it.

Phil. America is wronged; ſhe is not aſhamed they have ever gloried in the name

of

of Britons, as the name of liberty, glory, and virtue, of every praiſe, and of every bleſſing.

Ariſt. And yet they are throwing our government behind our backs, and inſulting the laws and conſtitution on which they are dependent, and to which they owe theſe bleſſings, and talk of them much, but know not how to value them.

Phil. It is not true: they love and honour their mother country ſtill, and it may be long I think before they forget her benefits, however injured, however inſulted, however miſrepreſented or miſtaken; but they think, and are perſuaded, that they defend the Conſtitution.

Ariſt. What pray is the Conſtitution but the Parliament?

Phil. Do you mean to ſay, what is the effect but the cauſe, a part but the whole, that the means are to be regarded for themſelves, and not for the end; that the truſtees are the abſolute owners of the eſtate

eſtate, the guardians the heirs, and the ſtewards lords over the property committed to them ?

Ariſt. A great deal of this jargon has been talked, but I do not know why, but to confound and bewilder the people, and turn all conſtitutions into anarchy. I wiſh you would explain yourſelf.

Phil. I thought I had ; but I mean that neither the conſuls, nor dictators, nor tribunes, nor kings, were the Conſtitution at Rome, but means intended to preſerve it.

Ariſt. What then, we are to have one while a Parliament ; one while an Houſe of Commons to call themſelves a Parliament, and turn the Lords out of doors ; then a Protector, a King, then a government of ſaints, and then all the chimeras that Cromwell, Milton, Locke, Monteſquieu, Plato, Sidney, Ruſſel, and I do not know who of the tribe of enthuſiaſts, hypocrites, ſpeculatiſts, and mock patriots,

that have been, and will be, can think of coining?

Phil. I ſay nothing of Cromwell, but that I believe with Clarendon, he was a great bad man. Milton had his errors, as the ſun his ſpots. You do Locke and Monteſquieu great honour to claſs them with Plato as ſpeculatiſts and dreamers. Plato would have been glad of their company, and would have thought their dreams the dreams of Jupiter. And while you catch at his abſurdities, have you forgot his divine ideas of a future ſtate, of juſtice, and of aſſimilation to the Deity; a likeneſs which I believe we ſhall ſooner reach by doing good than by doing harm. As for Sidney and Ruſſel, ſpoken of as hypocrites, I leave thoſe who can think think them ſo, to the comfort of the thought. As for the Conſtitution I do not mean it ſhould change at every breath; I think the Parliament, conſiſting of the executive power, the Lords and the Repreſenta-

preſentatives of the people, is an eſſential part of it: but if the Parliament be an eſſential part of the Conſtitution, it cannot go beyond the Conſtitution: if it does it will not be the Parliament which the Conſtitution of England knows, but ſomething elſe.

Ariſt. But how can the Parliament go beyond the Conſtitution? is it not a part of the Conſtitution? Look to Lord Coke; conſult Lord Camden, Lord Chatham, and all the ableſt advocates (however they are pleaſed to be ſo) of America, and aſk if the voice of Parliament be not in law the voice of the people, the voice of the Conſtitution; if it do not bind perſons beyond ſea, perſons unborn, perſons who never heard of the act, becauſe it is the conſent of all.

Phil. Certainly.

Ariſt. Then you are condemned out of your own mouth.

Phil. Do not ſing Te Deum before a victory: the voice of Parliament is the

voice of the people, becauſe the people chooſes them; it is the voice of the Conſtitution, becauſe the Conſtitution has always ſaid the people ſhall have a Parliament, ſhall have men choſen by themſelves, and therefore properly repreſenting them; and if a man goes a voyage, or on his travels, and an act is made, it is an act made by the Repreſentatives he choſe himſelf; and the moment he ſets foot on Engliſh ground, he ſhall as much be bound by all the acts made in his abſence, as thoſe when he was preſent; for if he had been preſent he could not have made them with his own lips, unleſs he were a member. They ſhall bind people unborn, till thoſe people by their Repreſentatives repeal them, becauſe men who come into ſociety, muſt be bound by the regulations ſubſiſting in that body of men, amongſt whom they live, till they chooſe to alter them, which it is not fit they ſhould do, by a leſs power than that which made them; they have had the

benefits of laws in which they had no ſhare in making; and they may have their ſhare in remedying the inconveniences.

Ariſt. Well; and is it fit America ſhould alter our laws by a leſs power than that which made them? or is her power equal to that of Parliament? But they graſp at every thing.

Phil. She does not think her power equal to Parliament; ſhe can make no laws againſt the Conſtitution; but ſhe wiſhes to obey the Conſtitution, which ſhe thinks does not permit thoſe to be taxed who are not repreſented.

Ariſt. So then all the difference is, that Parliament can make laws againſt the Conſtitution, but America, you ſuppoſe, cannot.

Phil. I think that Parliament ſeems as if it ſuppoſed it could make laws againſt the Conſtitution; and though it derives its power from repreſentation of the people, do ſomething which neither itſelf by the

Conſtitu-

Conſtitution can do, nor the people that it repreſents.

Ariſt. How do you mean?

Phil. Suppoſe there were no Parliament here for a year or two, who ſhould tax the people?

Ariſt. I do not know, I ſuppoſe they could not be taxed.

Phil. Why?

Ariſt. Becauſe the Parliament is the only power which can tax them.

Phil. But why not the King?

Ariſt. Becauſe it is againſt the Conſtitution.

Phil. Why? when the Parliament is out of the way, is not the power of the ſtate in the King?

Ariſt. No more than it was before; he can make no laws.

Phil. So then there is a power which can diſſolve Parliaments, but cannot ſupply their place, for the purpoſes of taxation, without creating them anew?

Ariſt. I believe it is ſo. You remember

the

the caſe of ſhip money is now univerſally held not to be law.

Phil. I remember it as a ſtriking inſtance, where reaſon, natural juſtice, and the principles of the Conſtitution, triumphed over learning, authority, precedent, ſubtilty, power, and all the ſpecious pretences of expediency and public neceſſity: thus I uſed to think of it, and I find ſo do you. But are not you afraid we were wrong?

Ariſt. No, ſurely.

Phil. Why I thought the ground of conſidering that determination as illegal, was, that no colour of prerogative, no authority of precedents, no arguments of convenience, nor even the ſpecious ſemblances of national ſafety, and the neceſſity of ſuch a power for the defence and honour of the kingdom, could make that law to which the people had not conſented?

Ariſt. Yes; but when there is a Parliament, the people conſent becauſe they are repreſented.

Phil.

Phil. What thoſe who chooſe the members are repreſented by them?

Ariſt. Yes, and ſome who do not chooſe them.

Phil. How are they repreſented?

Ariſt. Virtually.

Phil. Can a whole body of people then be repreſented virtually?

Ariſt. Yes.

Phil. How comes it then that the King, when there is no Parliament, may not virtually repreſent that Parliament which he has diſſolved, and the powers of which muſt go ſomewhere; and if he repreſents them, he may repreſent the people.

Ariſt. None but the Parliament can repreſent the people, and the King cannot repreſent the Parliament?

Phil. So I underſtand; but I aſk the reaſon, and not the fact.

Ariſt. Becauſe if he did, the people would not be free; and it is againſt Magna Charta, and many ſtatutes.

Phil. I underſtand from Lord Coke, that

that Magna Charta in this point, and moſt others, is a declaratory act.

Phil. I believe it may.

Ariſt. Then the King could not have done it before Magna Charta?

Phil. I ſuppoſe not.

Ariſt. Was there any written law before that, to hinder him?

Phil. I think not; at leaſt none that is known.

Ariſt. Why then I ſuppoſe he could not do it, becauſe, as you ſay, the people would not have been free, as by the Conſtitution they were and ought, becauſe he cannot repreſent them as the Houſe of Commons does.

Phil. Can any other man repreſent them againſt their conſent, or without it, if the King cannot?

Ariſt. No.

Phil. Or twenty?

Ariſt. No.

Phil. Or five hundred?

Ariſt. No.

Phil. Then five hundred would not make a Parliament, if the people did not chuſe them?

Ariſt. No, nor five thouſand!

Phil. But when they are choſen, can they chooſe any body to repreſent them, as proxies?

Ariſt. No: for Lord Coke ſays, they are but proxies, and therefore cannot make proxies; no, not a ſingle member.

Phil. Then it ſeems a whole people here cannot be virtually repreſented, that is, by members not of their own choice: this agrees with the rule of law, that the fiction of law always includes equity?

Ariſt. It does; but I don't know a people out of England may not be repreſented by members not of their own chooſing—I want to be inform'd.

Phil. A proxy means an agent, does it not? to do ſomething for me, which otherwiſe I muſt have done myſelf?

Ariſt. Yes.

Phil. Can he do any thing for me which I could not have done myſelf?

Ariſt.

Ariſt. No; for Lord Coke and common ſenſe will inform us, that a derivative power cannot go beyond the original.

Phil. Could I or all the people in the county where I live, lay a tax on the people of another county?

Ariſt. No: for you have not their conſent to repreſent them.

Phil. Can I employ an agent to repreſent them?

Ariſt. No, ſure, when you can't do it yourſelf.

Phil. And ſo if all the counties but one in the kingdom ſhould ſend Repreſentatives, and that one county was not permitted to ſend any, that county could not be taxed.

Ariſt. May be not.

Phil. Nay ſure not; for you have admitted the Repreſentatives are agents, becauſe they repreſent the people.

Ariſt. Right.

Phil. If I make an attorney, proxy, or deputy, will he be your attorney, proxy, or deputy, or mine?

Ariſt. Mine, certainly.

Phil. Then I can't appoint a bailiff for your eſtate without your leave?

Ariſt. No: would you think of treating a fellow Engliſhman as a ſlave in Turkey!

Phil. Then much leſs an agent for a county, without leave of the county?

Ariſt. Yes.

Phil. And ſtill leſs for the people, without leave of the people. What are the people?

Ariſt. Engliſhmen and free men.

Phil. Becauſe they are Engliſhmen they muſt be free then?

Ariſt. God forbid elſe! ſhould you like to be born an Engliſhman, and be a ſlave!

Phil. Why are they Engliſhmen?

Ariſt. Becauſe they are born in England.

Phil. So an Engliſhman cannot be born out of England. If he were born in Turkey, he would be a Turk; if in Caffraria, an Hottentot; if amongſt Swift' Yahos,

a Yaho; if in a Ruſſian deſart, he would be a Ruſſian bear.

Ariſt. No, he would be an Engliſhman ſtill; if he were born of parents who were in the King's allegiance as natural-born ſubjects.

Phil. He could only be an alien, if born abroad, though he came into England.

Ariſt. True.

Phil. So then it is not the ſoil that makes an Engliſhman; but the ſons of Engliſhmen are Engliſhmen all the world over?

Ariſt. Yes; and the ſons of aliens, if born in England.

Phil. Is one Engliſhman entitled to be lord and maſter over another, as I over you, for inſtance, becauſe I am here, and you are abroad?

Ariſt. No; we are all brethren and equals.

Phil. Equals then cannot command equals?

Ariſt. No: the law and reaſon ſays, they cannot.

Phil.

Phil. If one equal cannot command another, perhaps a thouſand or five hundred may?

Ariſt. I do not know.

Phil. How; for they will ſtill be but equals! and if one fellow Engliſhman cannot command another without his conſent, fifty may have more force, but they cannot have more right.

Ariſt. I believe you ſay true.

Phil. Then I cannot make my equal accept my proxy for his?

Ariſt. No.

Phil. We ſaid juſt now our Repreſentatives were our proxies: then I cannot make my equal accept my Repreſentative for his?

Ariſt. True.

Phil. And numbers will make no difference?

Ariſt. Allowed already,

Phil. Then all the people here cannot make other people, their equals, elſewhere, accept all or any their Repreſentatives,

as the Repreſentatives of any body there; and Engliſhmen are every where equals.

Ariſt. I own it.

Phil. Then all the Engliſhmen here cannot make the Americans accept our Repreſentatives as theirs?

Ariſt. This looks like proof: but can ſo many wiſe men be miſtaken?

Phil. Do you think the King's Proclamations can have the force of a law?

Ariſt. No: for it is not a law, unleſs the people conſent to the making of it.

Phil. And yet there were many wiſe men who thought the King's proclamations might have the force of a law; and the Parliament enacted they ſhould, in the reign of Henry VIII.

Ariſt. Yes.

Phil. Did not the judges determine, this act did not extend to ſucceſſors?

Ariſt. Yes they did.

Phil. Does not the name of King include ſucceſſors?

Ariſt. Yes it does.

Phil,

Phil. Did not the judges who determined it, know this?

Ariſt. I can't determine.

Phil. What! did they know that maxim of immemorial antiquity, that the King never dies?

Ariſt. Yes, doubtleſs.

Phil. Why then can that which dies not, be liable to ſucceſſion, or is it one always?

Ariſt. One certainly.

Phil. Then the King is a name equivalent to that of the Royal Dignity, and includes ſucceſſors and Queens regnant?

Ariſt. I think ſo; and I believe Plowden, Lord Coke, and Judge Blackſtone, tell us ſo.

Phil. Why then they were miſtaken, in ſuppoſing it did not extend to ſucceſſors?

Ariſt. Perhaps they might,

Phil. No: but I fancy they thought the Parliament miſtaken, in thinking they could give this power to the King; if they

could

could have done it, they knew ſucceſſors took it of courſe.

Ariſt. It ſeems rather doubtful.

Phil. Do you think Popery the true religion?

Ariſt. No, I do not.

Phil. Yet when Popery was the eſtabliſhed religion, laws were made by Parliament, on the ſuppoſition of its being true *?

Ariſt. Yes.

Phil. Then you think Parliament may be miſtaken?

Ariſt. Yes.

Phil. If my agent miſtakes in a private matter, I will paſs it over, if the peace and intereſt of many others require it; but if he is miſtaken in a public matter, whereby the public intereſt may ſuffer, and goes beyond his commiſſion, ſhould I wiſh him to continue his miſtake, or require him to retract it?

* Vide 1 and 2 Philip and Mary, cap. 8, particularly.

Ariſt. Not to continue in it, ſurely.

Phil. But if I acquieſced, could I bind other people, who had ſuffered in their right, by his exceeding his authority?

Ariſt. No.

Phil. The Commons of England in Parliament are the Repreſentatives of England; they are our agents, and not the agents of the people of America.

Ariſt. True.

Phil. Then if they have acted as if they were their agents, they whoſe agents they are, ſhould deſire them to retract.

Ariſt. May be ſo; but if they do not, the people ſhould acquieſce.

Phil. Would you adviſe us, or the people, or the Biſhops to acquieſce, or the Clergy of England, if the Biſhops were not permitted to vote in Parliament?

Ariſt. If they were not, it would be hard.

Phil. Yet you know it was propoſed, and perhaps you know Lord Clarendon oppoſed it, becauſe it would be unjuſt to

tax

tax the Clergy, if they were not repreſented by their own body *.

Ariſt. He did.

Phil. Well, if it was hard to tax the Clergy who live amongſt us, and who may vote at elections, will it not be harder to tax a whole body of people who do not live amongſt us, and cannot vote for Repreſentatives?

Ariſt. I do not know what to ſay to this; but Lord Camden, and Lord Chatham told them all this, and raiſed all this ſtir.

* A bill being brought to take away the Biſhops votes in Parliament, and to leave them out in all commiſſions of the peace, or any thing that had relation to temporal affairs, he was very earneſt for the throwing it out, and ſaid, if they were taken out, no body was left to repreſent the Clergy, which would introduce another piece of injuſtice no other part of the kingdom could complain of; who being all repreſented in Parliament, were bound to ſubmit to whatever was enacted there, becauſe it was, upon the matter, of their own conſent; whereas if the bill was carried, there was no body left to repreſent the Clergy.

Vide the Life of Lord Clarendon.

Phil. There needed no ghoſt to tell them theſe plain truths. They were Engliſhmen, and without oracles could know this, and I believe felt and acted on theſe principles, before either of thoſe Lords had ſpoken about them. I rather ſuſpect Magna Charta the ſtat. of 28 E. 1. Reaſon and plain ſenſe told them this, and that the inconſiderateneſs of Government, to ſay the leaſt, obliged them to apply this knowledge to practice. But they are abuſed for being tempted by Lord Camden and Lord Chatham, as their enemies will have it, and for being diſciples of Locke; and I expect ſoon they will be ſpoken ill of for being reaſonable creatures, that is to ſay men.

Ariſt. Well, but they may be repreſented here.

Phil. How?

Ariſt. Thoſe who pleaſe of them may come and reſide here, and vote for Repreſentatives; or if they have property, be Repreſentatives themſelves.

Phil.

Phil. An eaſy method of repreſentation —but pray when they come here and vote, or are themſelves choſen, where will they ſit?

Ariſt. Where will they ſit?—where our Members ſit, in Weſtminſter.

Phil. There will be ſo many of theſe American Repreſentatives—but will they be in no danger of being out-voted?

Ariſt. I cannot ſay that; any body may be out-voted.

Phil. Yes, even a Prime Miniſter: but ſuppoſe not, did you think our Repreſentatives would anſwer the end, if they were to transfer themſelves and their property to America?

Ariſt. No: for they would repreſent America rather than England.

Phil. Would not the caſe be the ſame of American Repreſentatives coming here, they would repreſent England and not America?

Ariſt. I cannot diſtinguiſh; but if there is reaſon in this, the Americans never ſaw it;

it; they are head-ſtrong malicious hypocrites!

Phil. Nay, but you have granted they are Engliſhmen, our brethren, our equals: when I ſay that I wiſh to eaſe America of the burden of theſe aſperſions, I confeſs that I do it more for our ſakes than theirs: they have ſuffered, and are to ſuffer more than words, if our preſent war proceeds: I wiſh only that we could think better of them (or perhaps I ſhould have ſaid, ſpeak better of them) than at preſent ſome zealous writers and ſpeakers have choſen to do. I believe in truth, that many think much better of them than they ſpeak; or elſe ſpeak and write without the trouble of thinking or examining. The juſtice of our war againſt them may appear differently to others; for myſelf, I am ſorry for the Revolution, and ſorry that Magna Charta, or the Bill of Rights, ever paſſed, if our war againſt them be a juſt one; for the ſame meaſure

of

of juſtice ſeems to me to have been dealt to us, when we had recourſe to arms, to deliver ourſelves and poſterity from its effects; and had Magna Charta, the Revolution, and the Declaration of Rights, beſides infinite other ſtatutes to aſſure us, that neither we nor our poſterity, ſhould ever have that kind of juſtice done to us for the future.

I am ſorry too, that an Aſſembly of Repreſentatives, a Council, and a Governor, were ever eſtabliſhed in the Provinces—if this image of a Parliament was in truth no more than a kind of larger pariſh veſtry, as it has very quaintly and candidly been repreſented. Indeed it will not be quite ſo good, nor ſo free a thing, as the veſtry of the pooreſt pariſh in England; ſince that is compoſed of people who tax themſelves for the ſupplies of the pariſh; and if any other ſupplies are wanted, tax themſelves to them by their borough, or at leaſt their county Repreſentatives;

tatives; which Repreſentatives go ſhares with them in the burden; and if they behave ill, the ſufferers know their remedy, for the ſufferers are thoſe who chooſe them, and who are not obliged to chooſe them again: ſo that, Mr. Gravedigger of Hindon, if you will, may have a larger power in the diſpoſal of his property, and a freer enjoyment of it, than two millions five hundred thouſand of fellow Engliſhmen on the other ſide the Atlantic.

Ariſt. Aye, but they are a great way off!

Phil. The countryman in Italy was ſatisfied with that reaſon, for not believing in the Pope: and if it were meant as an argument why they ſhould not believe they ought to be taxed by a body of men, of whom they know little more than of the Pope of Rome, nor ſo much as of the Biſhop of Canada, there might be ſome ſolidity in the reaſoning: more than I ſee at preſent.

Ariſt. Yes; but if they do not know who

who taxes them they are to thank themſelves; they left many enjoyments and privileges; and this amongſt the reſt.

Phil. That they left many is certain: and are they therefore to loſe all?

Ariſt. Yes; thoſe of which they are become incapable. They cannot be repreſented here.

Phil. No: they cannot, any more, nay, much leſs, than the Iriſh. America therefore ought not to be taxed here, any more, nay, much leſs, than Ireland.

Ariſt. But did they not go from England, and ſettle in America?

Phil. Yes: and ſo have many gone from England and ſettled in Ireland: tax them alſo.

Ariſt. No: in our ſupremacy we tax whom we pleaſe, and exempt whom we pleaſe.

Phil. But when, except in the caſe of America, did we ever attempt to tax thoſe whom we did not repreſent?

Ariſt. Why did we not before the time of Henry VIII?

Phil. The caſe, the circumſtances, and one ſhould hope the times were very different. What became of this when our knowledge of the Conſtitution, and the neceſſity of Repreſentation encreaſed, and Wales was ſettled, and our civil wars ended, we ſhall ſee by and by if any be ignorant.

Ariſt. But have we the leſs right becauſe we have not exerciſed it before?

Phil. No: but when a right is diſputed, its never having been exerciſed for a courſe of ages, is a ſtrong preſumption, where its exiſtence is not neceſſary and certain, of its non-exiſtence; eſpecially if the occaſions have been frequent, and the temptation ſtrong to exerciſe it, if it did exiſt, and the power was not wanting, and the plea ſpecious, and the acquieſcence probable?

Suppoſe then, Queen Elizabeth, her finances low, her influence over her Parliament vaſt, and arbitrary; Spain trembling beneath her nod; France her ally, her friend, almoſt her tributary; the

tyranny

tyranny of the Pope broken; the United Provinces riſing faſt into greatneſs, under her auſpices and protection: Ireland ſmarting under the rod of conqueſt, and conſcious of outrageous cruelties in her reſiſtance to England; ſuppoſe ſhe had ſtretched the arm of Parliament over that nation, ſo obnoxious then to reſentment, ſo near, ſo fatally convinced of her power; ſo ſhaken and divided in itſelf; ſo deſolate, helpleſs, and dejected? Was there ever a fairer opportunity, a more obſequious Parliament, a people leſs capable of reſiſtance, a pretence more plauſible, (for her own finances were very ſmall) a ſovereign leſs likely to be ever ſcrupulous, a power more formidable to enforce ſubmiſſion? Hardly I think ever; but the example of the United Provinces was too near her.

Ariſt. No; but Ireland was too poor.

Phil. The leſs it had to loſe the more negligent it would have been, whether

its own Parliament, or Elizabeth's, were the taxers: and a country, newly conquered, with ſuch circumſtances of ferocity in their reſiſtance, had little indulgence to expect, and little oppoſition to make; the people being probably as much oppreſſed by their rude and ſavage defenders, undiſciplined, ungoverned, lawleſs, without order, without notion of liberty, or regular ſociety, as they could be almoſt even by a foreign Parliament.

But the Americans are not compoſed of ſuch a ſet of brutal clans; they have order, knowledge, diſcipline; they know the ends of ſociety; they know the principles of our common Conſtitution, they feel them, they have lived and been happy by them; they have no idea of life without them. They cannot think of them ſo meanly as extrinſic accidental circumſtances, which can veſt and diveſt as they change their place. Their fathers were free here: did they go to be ſlaves?

Did

Did they go that their poſterity might inherit ſlavery? Or went they to be like thoſe whom they left behind? They went for liberty of conſcience, and of property. Whatever they had gone for, theſe would ſtill have clung about them. They were not at liberty to convey theſe from their poſterity; or to ſurrender the privileges of the Conſtitution, though only for their own lives; and ſhall they loſe what they croſſed unknown ſeas, and ſtood all the hazard of ſavages and climates to retain? When if they had fled as far to avoid freedom, as they did to preſerve it, their madneſs might have puniſhed itſelf; but could not have given rights over them to the prejudice of others.

Ariſt. But they loſt them neceſſarily.

Phil. And is ſervitude a neceſſary condition of Britons in any quarter of the globe? Or is it not ſervitude, that another ſhould take what he pleaſes of mine, without my conſent given by myſelf, or my deputies?

Ariſt.

Ariſt. Yes; for it is the condition of Engliſhmen here: many of whom have neither a voice in Parliament, nor chooſe any to vote for them.

Phil. If they are not of any Borough, they pretty eaſily may; or if they do not chooſe that, they cannot help being of ſome County: and where will they find a County without Repreſentatives? And what is the property required to make them voters for the County; about fifty times leſs than qualifies them to ſhoot a partridge, and five times leſs annual income, (freehold indeed) than amounts to the rent of a tenement to gain a ſettlement. And if they have not this pittance, ſtill they do not ſtand alone; they dwell with, they converſe with thoſe, who chooſe Repreſentatives; and who are ſo blended with the unrepreſented part, that if the repreſented are not oppreſſed, it is not eaſy to oppreſs, by the ſame tax, the unrepreſented, who inhabit the little huts of the others, and have little to do with land-

land-tax, window-tax, or even poor's rate, except receiving; and ſo far from having contributions raiſed on them, that they muſt live by contributions. They cannot tax their rags.

Ariſt. But do not we tax their beer, their bacon, their cheeſe.

Phil. I will add their bread, if you like it. What is the conſequence? They muſt pay the tax, and the pariſh muſt pay it back. Which perhaps is much the caſe of taxing a country with which one trades.

Beſides, this beer, bread, bacon, and cheeſe, all theſe the honeſt voters eat, drink, and conſume; and in larger quantities than the poor unrepreſented miſerables. So that if they will tax theſe poor creatures, they muſt not only reimburſe them, and with intereſt, when thrown upon the pariſh; but they muſt tax their own beer, bread, bacon, and cheeſe; and not only ſo, but the members themſelves in Parliament muſt feel

all

all neceſſaries, and even delicacies and ſuperfluities, riſe in proportion.

Ariſt. This laſt circumſtance indeed, that a tax on one article is in effect a tax on all, is not ſo immediate and direct in view, as the precedent.

Phil. But I take it to be no leſs certain.

Ariſt. Why then this will apply to America; and therefore there is the ſame ſecurity as for ourſelves.

Phil. Firſt, I ſay, a collateral inconvenience is not ſo great a ſecurity as a direct one, againſt the miſchief being done: and next, I ſay, that if it be true, as I am perſuaded it is, it will ſerve not as ſecurity againſt over-taxing them, but a proof of the ill policy of taxing them; if not true that it would produce the inconvenience to us, then there is that reaſon why it ſhould be dangerous to them; for it will be very unſafe for any people to be taxed by thoſe who do not feel the inconveniency of taxing them in any extent.

Ariſt.

Ariſt. But it is now declared we will never tax them beyond what is fit; becauſe it is againſt our intereſts.

Phil. Every thing arbitrary is againſt the intereſts of the doer; but one might as well ſuppoſe nobody would be a bad maſter, a bad huſband, or a bad parent, or any way bad; becauſe to govern by force and fear, where one might and ought by love, is always againſt one's intereſt; and to be bad in any caſe is againſt our higheſt intereſts, temporal and future.

The argument will hold ſtrong the other way too; that the Americans would not reſiſt us without ſtrong cauſe, or neceſſity, when they have ſo much to loſe, and nothing of value to gain, by an unneceſſary reſiſtance.

But of all wonders, if this be true, why do we not ſurrender to the King all our liberties, and aboliſh Parliaments; or to the Parliament, and make this Parliament perpetual, and let them do what

they will with the Conſtitution: for it certainly is their intereſt to govern us well, and to keep the Conſtitution; for where can they find a better? But when was it not their intereſt to govern well, in all thoſe inſtances, ancient or modern, where kings, nobles, people, have governed ill?

Ariſt. But we ſhall never be ſo fooliſh as to oppreſs them, if we can get nothing by it.

Phil. Are we ſure of that? They think we oppreſs them now; and many think ſo at home; and none ſeem to think of gaining much; and we are likely to loſe even beyond numbers, or conjecture.

However, to go farther; does not a Turk, or a Negro, know, that it is not the rod being always on his back, or his limbs upon the wheel, that makes him a ſlave, and wretched, for he would ſoon be out of his pain; but it is becauſe, if he lives now, if he is out of pain now, if he has a penny in his pocket, or a child to hold in his arms, a wife, or a bed, it is becauſe

becauſe his lord pleaſes. And are we ſo dull, as to think oppreſſion reſts only in corporal feeling, and not chiefly, and above all, in the ſervitude of the will to another man's will; and the property of all I have being his, though the occupance may be mine for life, for a year, for a moment, as he ſhall think convenient?

Ariſt. But do we mean to burn their houſes, murder their children, raviſh their wives, and eat up them and all that is theirs?

Phil. Unleſs they are obſtinate, I ſuppoſe.

Ariſt. Why, even then indeed we do not mean all this; but who knows what may happen.

Phil. I do not ſuppoſe we have got the canibal taſte yet; and it will be ſome time before we have ſtomachs of capacity enough to ſwallow up America at a gulp. But does not Dr. Johnſon, Mr. Weſley, Dr. Tucker, nay and Parliament itſelf, ſupport the taxation claimed in expreſs terms, on grounds which would reach all this, an abſolute, uncontroulable, unli-

mited, boundleſs right of binding them in all caſes whatſoever.

If the power of the Turk, or any power, goes farther than to bind in all caſes whatſoever, it will go a ſtretch beyond poſſibility; and if we have the power thus far, we inſiſt on the right. And can the taxation of America, other than by America herſelf, both as to the mode and the quantum be ſupported, on any other principles? Do we want the money; when will it pay us the war? When will it pay us the expences already incurred?

Ariſt. We do not want it.

Phil. I am ſorry then, that wanting nothing, we chooſe to put ourſelves ſo near the ſituation of wanting every thing.

Ariſt. We only inſiſt on the right.

Phil. When we have forced the acknowledgment of this barren claim, will it be more a right? And are we to wade through blood to waſh away the dimneſs of American apprehenſion about this ſuppoſed right, which we cannot well force them to ſee; and

and let who will ſee it, I do not find any is to enjoy.

Ariſt. We have benefited the Americans at a vaſt expence!

Phil. Are we to force money from them to pay our benefits? They have benefited us with their arms, with their money, in the common defence, in the reduction of Cape Breton by their ſole force; in aiding us in the conqueſt of Canada.

Ariſt. They did it for themſelves.

Phil. Doubtleſs. And poor diſintereſted Great Britain, ſaved a country of about four millions of ſquare miles, and with two millions five hundred thouſand of her own ſubjects, and a vaſt commerce, the nurſery and ſupport of our naval ſtrength, ſolely for the ſake of the ingrateful Americans. The truth is, we could not ſerve ourſelves without ſerving each other; nor one hurt the other and not itſelf. I wiſh Great Britain had never overlooked this truth.

Ariſt. But their trade is worth nothing.

Phil.

Phil. It does not look much to our credit to have diſcovered this ſo late.

Ariſt. TheGerman, the Dutch, the Ruſſian trade are infinitely more advantageous.

Phil. The Ruſſians begin to help themſelves, and will do daily: and though the year before laſt, I am credibly informed, they ſent orders for cloathing of two regiments from England, they have ſent laſt year, I am informed by the ſame authority, orders for none.

Beſides, do we think the American trade will go no where elſe, if it is loſt to us? When the Spaniards loſt the United Provinces, they loſt not only them, but a great part of their Weſt Indian, and I believe Eaſt Indian trade. We, from our ſituation, ſhould be likely to loſe much more. And yet we are puſhing every thing by land and ſea, and forcing earth, and as it were heaven, to get rid of that, with immenſe profuſion of blood and treaſure, which ſurely, if it is not worth the keeping, will not afford either to be kept, or thrown away ſo dear.

Ariſt.

Ariſt. Yes; but if we conquer them, as who doubts, they will neither be loſt, nor thrown away.

Phil. I doubt that, if we do conquer; and beſides, our conqueſt it was ſaid in the outſet was certain and eaſy: I doubt we find it now difficult and doubtful. But ſuppoſe we had all the towns in America, and every man in America at our mercy, what could we ſay in juſtice or in prudence, but if you will truſt us; reſume your Conſtitution, revive your extinguiſhed commerce, if poſſible, rebuild your towns; repair your ports; encreaſe, multiply; pay no taxes, for we cannot tax the ruined; and take money of us, to enable you, two or three centuries hence, to undo a good deal of the miſchief we have done ourſelves, and you; and then, if nothing intervenes, and you will live under us, and we lay aſide our pretenſions, out great grand-children may ſee their grand-children half as happy as we were before the taxation of America was ever thought

thought of; provided it is never thought of again.

Ariſt. But they muſt yield, and all will be ſoon over.

Phil. This war, I doubt, will firſt coſt many thouſand lives; and the conqueſt be longer in diſputing, than the right has been.

Ariſt. As to the right, the great conſideration, however, is ſtill behind. All the lawyers are for us.

Phil. They are not too many in either houſe; and I do not know much of the ſentiments of thoſe in America, out of the houſe. I ſuppoſe they are not all agreed with miniſtry, in theſe meaſures out of doors; becauſe within doors, I think the majority are not with miniſtry.

Has Lord Camden ceaſed to be a lawyer? Is the public ignorant of the names of Glynn, Dunning, Feilde? Are theſe names of no weight, if lawyers are

to

to decide? Has Lord Chatham forgotten, or did he never know, the intereſts of his country?

Ariſt. All the men of property, integrity, and independence, are on the ſide of taxation.

Phil. For ſhame, let not this be ſaid after theſe names, but now cited in one profeſſion, and ſuch only of the profeſſion as are in one order of the ſtate, and that extremely thin of them.

Ariſt. All the Clergy.

Phil. Have they forgot a Shipley?

Ariſt. All the merchants.

Phil. Except thoſe who have petitioned againſt the war, or are ruined by it, and too remote to petition; or for ſome other reaſon muſt not, or cannot.

Ariſt. All the people.

Phil. Witneſs almoſt every corporate town in England, many in Scotland; witneſs the petition from Dublin.

I wiſh the miniſtry could ſee together the names of theſe few malecontents;

they would be glad that they ſaw them only upon paper, like our credit and our reſources. What thoſe reſources are, Dr. Price will teach; or if he is not believed, we muſt learn of time.

Ariſt. But what matters the diſſatisfaction of the people in England? The funds, a ſtanding army, and, above all, the treaſury, will tie up their hands.

Phil. Government methinks ought to ſhudder at the thoughts of holding a nation, ſuch as ours was, by a tenure more than ſlaviſh; the tenure of corruption as well as force; and beſides, neither ſtanding armies, nor funds, are eternal; and extreme power, by whatever means acquired, ever has produced, and ever will, its own deſtruction. Immenſe revenues, arbitrary contributions, a ſtanding army, a ſervile, venal, effeminate people, the Roman Emperors had: the remains of the Roman bravery kept them alive till that died, the laſt of all their virtues, and fated not long to ſurvive the reſt, and left them a prey

to

to a deluge of barbarians, whom their fathers would have diſdained for their ſlaves.

Ariſt. Yet ſuch governments are quiet, and I do not know whether any deſpotiſm is not better than the tyranny of the mob. A free government I think you call it?

Phil. Yes: to be ſure ſuch governments are very quiet: there are no inſurrections for liberty, no conſtitutional Revolutions. In Turkey, the throne is transferred to a new deſpot, as ſoon as the former has made a vacancy by the natur diſeaſe, the bow-ſtring, miniſtered by his guards, unleſs their rare fidelity, as it ſometimes happens, ſhould ſecure him the benefit of eſcaping that fate, to be burnt in his palace by the rabble.

As for miniſters, they have a good time in an abſolute government. No impeachments, no long and tedious proſecutions; they may enjoy the favour of the Prince to the laſt day of their lives, and

to the end of perhaps a fortnight's adminiſtration, or poſſibly half a year's: they may accumulate immenſe riches, if they will take proper care not to uſe or enjoy them: and all this at the ſmall coſt of being impaled by a brother vizir, on a little billet ſent by the ſultan, or his miſtreſs, or a vile favourite: their eſtates confiſcated, and all their dependencies and relations extirpated (happy that they can have no children) and this not for treaſon againſt the public; for there is nothing public but miſery: but for being too rich, too ſucceſsful, too good (though this fault ſeldom happens) or too dextrous politicians, or too indolent or active; or becauſe their maſter does not like their looks; or they forgot one of his three-hundred titles; or for ſome other capital crime which his humour happens to ſuggeſt. And whether one man or five hundred is thus abſolute, makes no other difference, than that in the laſt caſe there are more reſentments to fear, and humours

to

to gratify. And when there is a ſtanding army, and the forces of the treaſury, and the ſecurity of the public funds, as checks and ſhackles on the reſiſtance of the people; the Parliament, when it ſhall have ſerved as a ſcaffolding for abſolute power to build on, for any prince who may chooſe to build, will ſoon be knocked down and thrown away, and left to mingle with the other rubbiſh of an enſlaved nation.

We have long time laughed at the doctrine of Locke and Monteſquieu, as expiring Rome did at Cato and Brutus. We have laughed at hiſtory too; can we yet believe authority of men, precedent, or reaſon in this ſimple point, that ſovereigns and miniſters will be ſo far from more ſecure, becauſe the people can form perhaps no regular united plan of reſiſtance, that they will be in the greater danger.

While Rome was free, ſhe reſtrained all encroachments on the Conſtitution, without

without ſhedding of blood: when ſhe was corrupted, and in great part enſlaved, then was the Forum filled with ſlaughter, and Italy, with fury and deſtruction, and the world with religion. When ſhe was completely enſlaved, all was peace, deſpair, and deſolation. Sejanus dragged with a hook through the midſt of his broken ſtatues by the mob, his late idolaters: a Caligula ſtabbed by his guard: a Nero forced to his own death: an Otho, a Vitellius ſlain, with tumult and contumely: Tiberius, doubtful whether ſmothered by thoſe who wiſhed him a ſucceſſor, or his own vices; Seneca indulged for his ſervices and adulations, with the favour of chooſing how to die: Lucan ſacrificed, leſs perhaps for his plot than the crime of making better verſes than his maſter: the bad ſwept away for being bad, when their vices were of no uſe; and the good for being good; the miniſtry and the people worſhipping their good emperors for

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all their plagues; ſo that as the temporary hiſtorian has it, a thankſgiving ſtood only for a mark of ſome greater brutality, or more furious maſſacre; and as often as exile and murder iſſued from the command of the prince, heaven was thanked for it, and the tokens formerly of proſperity, were then memorials of the calamity of the public—and even Petronius Arbiter, the maſter of the pleaſures of Nero, was cut off with as little ceremony as the almoſt more than human character of Thraſea; and Tigellinus the ſupplanter of both, (if Thraſea could be ſaid to be ſupplanted) left to ſhew, that when compelled to die, he could die as ſcandalouſly as he had lived. Emperors, the lords of free men, the deities of flatterers, and the ſlaves of ſlaves. So that princes and miniſters have a great intereſt in unbounded wealth, and a ſtanding army. Recollect what has happened in France; and the attempts of aſſaſſination in Portugal, multiplied

tiplied with the cruelty of the puniſh-ments. Recollect what kind of inſurrec-tions have formerly ſhaken the throne of Ruſſia; compare the fate of Stephen, I will not ſay the conſtant diſquietudes of William the Conqueror, with his immenſe riches, and army of Normans; the diſ-graceful degradation of John; the end of Edward the ſecond, of Richard the ſecond, of Treſilian, the Spencers, of Mortimer, of Empſon and Dudley, of Wolſey, of Jefferies: the time would fail me in re-citing the ends of thoſe who have choſen to ſtand by armies, and corruption, with the limited power of wiſe and happy princes, and their miniſters; and ſee where the honour and ſecurity lies. Compare the ſpirit with which the Revolution was conducted, with the wars of the barons; the contentions of York and Lancaſter; and even with the moſt moderate of all precedent conteſts, that which ended with the violent taking off of Charles I. and then,

kings,

Kings, Miniſters, and Parliaments, may know, that there is the moſt danger, and the greateſt fury in the conduct of the people, when their ſervitude is moſt deſperate and abject: and that the moſt violent and fatal conſequences are never more to be feared, than when all ſeems huſhed; than when public oppoſition is leaſt practicable: and that a venal and enſlaved people, who act not from hope of better times, or love of the Conſtitution, but hate of thoſe under whom they ſuffer, will carry their revenge much farther, than a people who know they can reſiſt, and who have power enough to reſtrain exceſſes in government, without committing them in the extreme themſelves.

A free people puniſhes no abuſes but what they feel and ſee; and them regularly and in the ordinary courſe, not with violence and fury: it is the ſharp curb, and the frequent ſcourge, and inſulting heel of power, that makes them ever ſuſpicious and diſſatisfied: and it is

the ſmothered fire that devours what it firſt can ſeize upon, unſeen and inevitable.

Ariſt. What then you are the advocate of aſſaſſination?

Phil. No: for it is the producer as well as conſequence of arbitrary power, and tends to perpetuate the evil, and to introduce tyrannical expedients for the future, againſt a remedy which in itſelf is tinged much with the colour of tyranny.

In Republics, eſpecially ſmall ones, it might ſometimes be a good expedient: though even there it was often fatal to the liberties of the people.

In this country, in a great empire, and in a ſtate which ought always to continue a monarchy, though a mixed and limited one, nothing ſeems more dangerous to the public, or leſs likely to avail to any good end. I reſpect the king, not only in a private view, but becauſe the Conſtitution has wiſely provided that reſpect, in the room of force, as the beſt bond of government, and ſecurity for our liberties.

If his miniſters offend, ſuppoſing the Conſtitution to exiſt, there are other means of rectifying their miſconduct, provided by the Conſtitution. If it does not, its revival is not to be hoped from aſſaſſinations.

Ariſt. Is it then from a civil war here?

Phil. I have already ſaid, I am perſuaded not; the only conſequence is, that if no means of violence will be likely to repair thoſe miſchiefs, Miniſtry, and Parliament, that Parliament which is the conſtitutional palladium of our liberties; that therefore, for their own ſakes, as well as for us, they ſpeedily reſort to their proper powers, to remedy this evil, and reſtore peace and union; or they may ſuffer together with the nation, from deſperate men, what wiſe men, I believe, know would be unavailing to any probable good, and deprecate earneſtly, and cannot think of but with horror.

Ariſt. But it is the liberty of America, and Great Britain, for which Parliament

is contending: not its own power, or particular intereſts. "A king who depends "on ſeveral ſtates for ſupplies, depends on "none."

Phil. It is a wonder on this reaſoning, we do not aboliſh the Iriſh Parliament, out of zeal for the common liberty. But truly, becauſe the Colonies of America, refractory as we repreſent them, and republican, and at the diſtance of a thouſand leagues, and ſome of them larger by much than England, are in danger, like the petty provinces and baronies of France, of vying one with another in the nurſing of abſolute monarchy, we, out of tenderneſs to their liberty and property, are to take both under our own diſpoſal, and for fear they ſhould abuſe the repreſentation, veſted in them with analogy to the principles of our own Conſtitution, and as a neceſſary conſequence of their partaking of that Conſtitution, Parliament will grant their money for them; and they ſhall have nothing to buy ſlavery with,

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but ſhall have it gratis, or not at all, it being ſo tempting a bargain, and ſo much ſeemingly to their palate.

Ariſt. Pſha, what would they do with Repreſentatives but learn corruption?

Phil. Suppoſe then we ſhould go farther, and ſay, that the people here ſhall chooſe no more Repreſentatives, becauſe many of the electors are mean and intereſted people; and becauſe, if there ſhould ever be a corrupt Parliament, it may deſtroy the liberties of the people. I think the argument from the poſſibility of abuſe would ſerve as well againſt Parliaments here, as againſt Repreſentation in America: the misfortune is, it proves too far; it proves they ſhould have nothing; for every power to uſe any thing, infers a power of abuſing it.

One might ſpeak of the danger to our naval power, our intereſts as a commercial ſtate, and our domeſtic ſafety; the danger to all theſe in carrying on the conteſt:

conteſt: only we are aſſured the Americans will never be ſuffered to have a fleet, or to be independent.

Ariſt. What! and is it poſſible you can doubt it?

Phil. I fancy there are many ſtates which would rather ſee America by itſelf, than America in union with England. And as to a naval force, we know to what a pitch of rivalſhip with England the Dutch fleet arrived, in a few years; and in deſpite even of the triple alliance of France, Spain, and England. Theſe petty provinces, this ſpeck of earth, which its inhabitants could hardly manage to reſcue from the rats and ſea, the only enemies they had been uſed to fight againſt; this parcel of lumpiſh, cold, phlegmatic creatures, theſe butter-venders, plodders, and turners of the penny, burſt forth into a blaze of liberty, power, and glory, ſuch as perhaps neither paſt times can parallel, nor preſent have yet approached; and af-

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ter this example, let us ſay, if we can, that America will never be ſuffered to have a fleet; or that we can plainly ſee ſucceſs and triumph before us; though if we do ſee them plainly, we might ſpare this ſevere proof of them; I ſhould hope without indignity: if we do doubt of ſucceſs, it is better to leave off while it may yet poſſibly be thought that we might have conquered, if our humanity had not been greater than our love of ſuch a conqueſt, our wiſdom ſtronger than our reſentments, and our true and permanent intereſts than our imaginary intereſts in preſent.

But let us loſe what we may, ſuffer what we muſt, and gain as little as we can, ſtill our honour is intereſted; wretched and diſhonourable is ſuch honour!—it has almoſt conſumed our private juſtice, humanity, and virtue; and made gentlemen do, to be thought gentlemen, what the heart of a ſavage would relent at, an hangman would be aſhamed to do, and

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proſtitution would bluſh at; what a coward, one would think, the baſeſt coward, would hardly do to ſave his life: thence ſeductions, murders, adulteries, deceits, falſhoods, treacheries, blaſphemies, a neglect of all great and common obligations. And now it is to influence our public conduct. I fear, when we talk of our honour, we are too much convinced we are in the wrong, and not of magnanimity to amend it.

Ariſt. Surely honour is ſomething: loſe that, and we loſe all.

Phil. Very true: but I wiſh there were no honour but honeſty. If we are wrong, I know of no honour, but being right as faſt as we can: or ſuppoſe we were right, I know not of an honour ſo great as a magnanimous condeſcenſion to the prejudice and jealouſies of our brethren, in a point worth all their care and concern. An honour againſt our intereſts, againſt juſtice, againſt the Conſtitution, or but doubtful in theſe great points, I know not

not how to comprehend. Let us think how noble France looks in our eyes by the acquiſition of Corſica; how great Rome and Carthage appear with plundered provinces, ſlaughtered citizens, and a deſolated world. Let us think whether Spain would have ſeemed leſs diſgraced by keeping the provinces than loſing them by force againſt her will. Let us think of the Roman Senate to the deputy of Privernum, when they declared vanquiſhed enemies, who could prefer liberty to every thing, worthy of being Romans. Let us think of their behaviour on the feceſſion of the people, when they demanded the reſtoration of their repreſentatives, the Tribunes: when the generoſity of Rome did not quarrel with them for not being a legal aſſembly; or object their propoſing terms, and fixing conditions, and limiting the ſupreme legiſlature; but condeſcended to throw the blame on herſelf, and to declare, that the terms inſiſted on were ſo

reaſonable, that they thought to have been offered them unaſked; and when even the moſt manifeſtly unreaſonable demands, not ſuſpected, but made, were refuſed with dignity; but not made grounds of denying the matter in conteſt. Let us think of our own conduct when we embraced Wales, Cheſter, Durham, under the arms of an equal repreſentation; and by this juſt and conſtitutional conduct, did not debaſe but raiſe the dignity of Parliament, and commenced our dawn from darkneſs and tyranny: this was honour. Honour is not a precarious diſputed prize, held with ſtruggle and ill-will for a moment, but a poſſeſſion for ever. If they are Engliſhmen and ſubject, as certainly they are, to the general duties of Engliſhmen, let us glory that they enjoy thoſe privileges which are inſeparable from the duties. Let us ſay, "the rights of Britons are dear to us "every where;" let us ſay with Cicero,

Cicero*, the laws of liberty we think ought to be retained, not only here where our own Repreſentatives reſide, where our other magiſtrates, where juſtice is reſorted to in great confluence in our courts; where the authority of Parliament reſides; where the opinion of the people, their concourſe and obſervation are upon us; but wherever on earth, in whatever country, the rights of an Engliſh citizen be violated, this we think, or ought to think, touches the cauſe of the common liberty and honour. For let me repeat again, they went from us not to be ſlaves, but to be like what thoſe were, and are, or ought to be, whom they left behind.

* Retineri enim putatis oportere jura libertatis, non modo hic ubi tribuni plebis ſunt; ubi cæteri magiſtratus; ubi plenum forum judiciorum; ubi ſenatus auctoritas; ubi exiſtimatio populi Romani & frequentia; ſed ubicumque terrarum, & gentium violatum, jus civum Romanorum ſit, ſtatuitis id pertinere, ad communem cauſam libertatis & dignitatis.

Peace, peace, on equal, juſt, and honourable conditions, is my ſincereſt wiſh for the ſake of both parties. If we make them moderate and kindly, they will be the more likely to be permanent. The intereſt of both parties will be the ſecurity for keeping them. We are not to treat with natural enemies. We may therefore be condeſcending without injury to our dignity; and it will be a point of juſtice to be generous. Thoſe who are not backward to accommodation, are generally thought to have done the wrong: thoſe who are ready to be reconciled, were either originally in the right, or have the merit of what is ſometimes more honourable to our nature, to have erred by ſurprize, or infirmity; and from theſe no human wiſdom, or goodneſs, is exempt; and to retract on thought and deliberation, on principles of humanity and virtue. The wiſeſt of men and the greateſt ſtates have retreated, even from meaſures of

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acknowledged juſtice and prudence, when they have found unforeſeen events would render them impracticable, or make the evil of them greater than the good. America and Great Britain, I fear, can never be permanently happy unleſs re-united: and may every juſt means turn to that effect.

I cannot leave the ſubject without an earneſt exhortation, put formerly in the mouth of a great king, upon a very important occaſion, yet not ſo great as this, by one of the firſt of philoſophers, and therefore not the worſe for being the firſt of poets; and I cannot help indulging an imagination which to find realized would indeed be an unutterable ſatisfaction: ſuffer me to imagine that I hear our preſent Sovereign, as the common father of his people in both countries, uttering theſe words ſo full of greatneſs and humanity; wretched on either ſide will they be who are the laſt to conſider them.

"O

" O hear! take heed how you impawn our perſon;
How you urge on the tired ſword of war:
We charge you in the name of GOD, take heed!
For never two ſuch kingdoms did contend
Without much fall of blood; whoſe guiltleſs drops
Are every one a woe, a ſore complaint
'Gainſt him whoſe wrong gives edge unto the ſword,
That makes ſuch waſte on brief mortality."

Ariſt. Whether I am convinced or not by your arguments, as to the claims of America, I cannot ſay at preſent: and yet, methinks, I am almoſt half perſuaded. The words, however, laſt ſpoken would become any mouth.

Phil. And whoſe more than his who has ſo often given life where the ſeverity of the law has ſlain; and who might thus give life to thouſands—I might ſay ultimately, millions of innocent, faithful, and uſeful ſubjects here, and in America. As to my arguments, there is nothing new or uncommon; for reaſon, that ray

of

of the Divinity, is always ſimple, clear, and uncoloured; and he who would have newer arguments than thoſe urged before me, I am afraid muſt have worſe. Nor were the arguments of thoſe who have been before me, very new, they were in general as old as the Conſtitution, and many of them as old as nature.

I wiſh earneſtly, that not by theſe weak efforts of mine, but by the reaſon of wiſe and great men, who have ſpoken and written upon this moſt important ſubject, by conſideration of the thouſands uniformly acting upon it, in the midſt of danger and death; by the love of our country and of mankind; by the force of truth, and the power of the divine mercy; not only you and I, but our rulers, and all the people of this mighty empire, may be almoſt and altogether perſuaded to peace, union, and happineſs.

Ariſt.

Ariſt. But will America be perſuaded if we were?

Phil. Will ſhe be perſuaded to be free at eaſe, and in happineſs, if we are content ſhe ſhould. If that be all your difficulty, I am pretty well ſatisfied America does not like this war, becauſe it is a war, a war in their own country; a war againſt their countrymen; againſt Engliſhmen. I am farther ſatisfied that ſhe would think her welfare, and her liberty intereſted in putting an end to the war; and as I think ſhe will never ſheath the ſword till ſhe has that liberty which ſhe claims, ſecured; ſo I doubt not ſhe will then, if this be done in time, ſheath it inſtantly and gladly, with a hope never to draw it more againſt us, but to turn it on our enemies when our defence requires.

Ariſt. But what is this liberty; or how is it to be ſecured?

Phil. We are Engliſhmen, and know our own liberty, what it is by the Conſtitution

ſtitution ; this will ſolve the queſtion as to theirs. And perhaps we ſhall find, that it is nothing by which we are to loſe, but rather that we may gain by it in commerce, in their affections, in glory. As to the means of ſecuring it, much muſt be done to deſtroy, but a very little will ſuffice to ſettle it, I believe, if we apply ourſelves heartily, generouſly, and ſpeedily.

Ariſt. But what will be the plan. Do you foreſee the intricacy and embarraſſment ?

Phil. We muſt not talk of plans while we hold the ſword at their throats : when force is removed, reconciliation may eaſily take place ; and I think that plan will be the beſt which is the ſimpleſt and moſt favourable to their liberties, and moſt for the reputation of our ancient generoſity and juſtice : and, I believe, ſuch a plan has been propoſed long ago. Let us have hearts to be reconciled, and we ſhall not

want wiſdom or means. I only beſeech of Providence to grant us the will to uſe them: never was greater need; never ſuch a nation on ſuch an edge between the extremes of happineſs and ruin.

Juſt as *Philodemus* was ſpeaking, diſpatches arrived to *Ariſtocraticus*; who departed in haſte; and thus ended the converſation.

ADDENDA.

ADDENDA.

I HAVE added a note of ſome *very ancient law authorities*; the originals, and a tranſlation; on which I ſhall requeſt my reader to caſt his eye, as thinking *one* of them *particularly* of *extreme* conſequence, to the ſubject of the foregoing Dialogue, and to *public* conſideration.

"Nul home ſerra lye mes ceux que aſſenteront."

"No man ſhall be bound by a law but thoſe who aſſent.

Livre des Aſſizes, 44 E. 3. 19. Anno 1370.

"Terra Hibernia inter ſe habet Parliamentum & omnimodas curias prout in Anglia, & per idem Parliamentum facit leges, & mutat leges; ET NON OBLIGANTUR PER STATUTA IN ANGLIA, QUIA NON HIC HABENT MILITES PARLIAMENT." 12 R. 3. fol. 12.

"Reſolved, per omnes Juſticiarios in Camera Scaccarii aſſociatos. Anno 1484."

"The land of IRELAND hath a Parliament in itſelf; and by the ſame they make and change laws. AND THEY ARE NOT BOUND BY STATUTES

LIADE IN ENGLAND, BECAUSE THEY HAVE NOT HERE MEMBERS OF PARLIAMENT."

"Reſolved BY ALL THE JUDGES in the Exchequer Chamber, in the year 1484."

"And note, whereas it has been ſaid that the meaning was, that *Ireland* ſhould not be bound unleſs named, the caſe is *expreſsly* the *contrary*. For, the caſe was, as you may read, in the Year Book, of goods ſhipped from Waterford in Ireland, with an intent to unlade at Sluice, in Flanders, and not at Calais; and the bill recites *expreſsly* the ſtatute of Henry VI. And the ſtatute of 2 Henry VI. chap. 4, ſays, after reciting the miſchief of ſhips reſorting to other ports to unlade, &c. and not to Calais, "Le Roy volant ceux damages & amenuſement eviter DE L'AVIS ET REQUEST SUDITZ ad ordinez et eſtablez que toutz les eſtatuz en faitz et nient repellez ſoient tenuz et gardez et mys en due execution, et que le entier repair, des lains pealx lanuz quir plumb eſtain entier ou fonduz appellez ſhotten-tynne, et du toutz autres merchandiſes appurtenantz a l'eſtaple paſſontez hors de roialme d' Engleterre et des paiis de GALES et IRELAND ſoit au dit lieu de Caleys et a null lieu aillours de la mere ſur peine de forfaiture, &c. Anno 1463.

"The King willing that all theſe damages be avoided, BY THE ADVICE AND REQUEST AFORESAID, hath ordained and eſtabliſhed, that all the

the ſtatutes made and not repealed, be held and obſerved, and put in due execution; and that the general reſort for wool, ſkins, hides, lead, tin, unwrought or caſt, called ſhotten tin, and of other merchandizes appertaining to the ſtaple, tin, be from the kingdom of England, and the counties of Wales and IRELAND, to the ſaid place of Calais, and to none other place, beyond ſea, on pain of forfeiture, &c."

And on the conſtruction of this very ſtatute it was, in which IRELAND is *expreſsly named*, that it was determined by *all the Judges*, as already mentioned, that IRELAND was not bound; becauſe it had a Parliament and *made* and *altered* laws; and our ſtatutes would not bind them, *becauſe* they had not *here* Members of Parliament.

The authority of this caſe has never once been queſtioned: it has only been ſaid that the meaning was, our ſtatutes did not bind Ireland, unleſs expreſsly named. Ireland *was* expreſsly named, and yet the determination of all the Judges of England, but twenty-one years after the ſtatute upon which they decided, is, that Ireland was not bound as having Members of her own, and not ſending Members to our Parliament. I can hardly think it neceſſary to ſhew, that America has a Parliament, makes and alters laws, and does not ſend Members to our Parliament. The concluſion is unavoidable.

There

There is a caſe in the 20th Hen. VI. fol. 8. where FORTESCUE ſays, that the land of Ireland is ſevered from the kingdom of England: for if a tenth, or fifteenth, be granted *here*, this ſhall not bind thoſe of *Ireland*, although the king ſend the ſaid ſtatute into Ireland under his great ſeal, UNLESS THEY WILL APPROVE IT IN THEIR PARLIAMENT.

" Et auxi la terre de Ireland eſt ſevere del roiaume d' Angleterre: car ſi un dizme ou quinzime ſoit grantee icy ceo ne liera ceux d' Ireland meſque le roi mander' meſme ce l'eſtat' en Ireland ſouby ſon grand ſeel *ſi non que ils veulent en lour parlement ceo approver.*"

Granted on the other ſide that it would not; becauſe they have not commandment by writ with us to come to parliament; but, ſay they, it does not prove the land is ſevered from England; FOR A TENTH GRANTED SHALL NOT BIND THOSE OF DURHAM, NOR OF THE COUNTY PALATINE OF CHESTER.

" Pur ceo que ils n'ont commandment oue nous per breve de venir al' parlement. Mes n'eſt prove que la terre, eſt ſevere d'Angleterre car une diſme grantee ne liera ceux de Dureſme de le contie palat. de Cheſter."

So then it was underſtood, as far back as the 20th Hen. VI. that a tenth granted by parliament would not bind Cheſter or Durham; it could not be becauſe of their royal privileges, for they have thoſe privileges ſtill, and yet are taxed; was it becauſe

becauſe they were not named? Surely, when I name England, I name all that is in England. Was it becauſe they were not repreſented? Surely yes.

In the caſe in 1 Hen. 7. Huſſey chief juſtice, ſays, the laws of England ſhall bind Ireland. The reſt of the judges ſaid not much againſt it, ſays the reporter; though in the term before, in his abſence, ſome of them, he adds, were of the *contrary* opinion. And I ſuppoſe they might ſay nothing, becauſe what the chief juſtice had ſaid could not affect the caſe then in queſtion; for if the laws of England did not bind Ireland, then they were not bound; if they did, they had a licence which was held good. And having already, in the term before, expreſſed their opinion, that Ireland was not bound by the laws of England, they had no need to ſay much about it the next term, and therefore they did not ſay much againſt the contrary opinion; but I do not find any of them ſaid any thing for it, or aſſented to it, and they had ſaid enough againſt it before. But there is a caſe which I believe has been thought to come in proof of ſomething like what is claimed over America, it is the 3d Hen. 7. fol. 10. and I beg leave to conſider it.

The caſe of the 3d Hen. 7. is ſomething about bringing falſe money into England knowing it to be counterfeit. And the attorney-general puts a queſtion, whether if any man brings ſuch money out of Ireland, *into England*, knowing it to be counterfeited, it is treaſon? And they ſay, that

that Ireland is a member of England, and uſes the law of England, and makes money by the king's authority, and if they make bad money in Ireland, it is treaſon. The caſe is oddly reported; it ſeems not a judicial deciſion: the attorney-general aſks a queſtion, the judges anſwer him. But what is moſt ſtrange, the anſwer appears to have no relation to the queſtion; for the queſtion is about bringing bad money, knowing it to be bad, into England; and the anſwer is about coining money, or counterfeiting money.

As to the queſtion, whether an Iriſhman coming into England, and bringing there counterfeit money, knowing it to be counterfeit, be guilty of treaſon when he comes into England, he is certainly bound by all the laws of England while he is here.

As to the caſe of treaſon in counterfeiting the coin of England, that it ſhall be treaſon though done in Ireland, it was not the caſe put, as has been already obſerved; but the judges ſay, Ireland is a member of England, as if they had ſaid, it is under the ſame common ſovereign, and has the ſame conſtitution, and the people of Ireland are the king's ſubjects; we do not diſpute, that both Ireland and America are members of the dominion of the king of England; we do not diſpute, but affirm that they are ſubject to the conſtitution of England; for we ſay, they are governed by their own laws and parliaments as England is. They are the king's ſubjects; we do not doubt it; America does not doubt

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it: being the king's ſubjects they naturally owe him allegiance to defend his crown and perſon, and to acknowledge his conſtitutional prerogatives, of which the power of coining money is ordinarily, and in times of regular government, one of the chief. I do not ſuppoſe that the king's ſubjects any where can break their natural allegiance while the contract conſtitutionally ſubſiſts between them and their ſovereign; it is an univerſal duty owing by all the king's ſubjects in Ireland, America, or Spain, or in the moon if they could, or France; to coin money without the king's authority, was at common law, an indirect breach of this allegiance; how it was to be puniſhed would depend on the uſage at common law or ſtatutes. The Iriſh uſe the laws of England; yes: and as Forteſcue ſays, the law of England may be made the law of Ireland, if the Iriſh parliaments approve it; and I ſuppoſe in fact, the law of Ireland, and the cuſtom of Ireland, hath puniſhed counterfeiting of the coin as treaſon. And it is true alſo, that no man can make money here, in Ireland, or America, regularly, but by the king's authority. Thus the perſons of the Iriſh and Americans are the king's ſubjects, and conſequently are bound by their allegiance: and the laws of England, which are received and adopted by the parliament of Ireland, or in like manner by America, ſhall bind them. And this is all I can learn by this laſt caſe of Hen. VII. and which I do not wiſh to controvert, nor ſee any thing in that or the precedent caſe to ſhake the authority of the caſe of

Rich. I. If it meant more, which I think cannot be proved, it meant contrary. I take it to the two caſes of 20 Hen. VI. and 2 Rich. III. which will be the worſe for the caſe, but not for the argument. However, I think it is faireſt to conſtrue it as may agree with reaſon and precedent authorities, and not againſt them.

It is further obſervable, that the laws of England were *introduced* into Ireland, as ſaith lord Coke, *all men agree*, by the IRISH PARLIAMENT itſelf; and at the *inſtance* of the Iriſh in the reign of king Hen. II. who firſt conquered Ireland; and that the queſtion in 3 Hen. VII. aroſe, on the 25 Ed. III. cap. 2. and 3 Hen. V. cap. 6. and the 25 Eliz. III. cap. 2. is in *terms declaratory* of the *common law*; and the 3 Hen. V. cap. 6. is in *terms* declaratory of the 25 Edw. III. cap. 2. and the Iriſh parliament itſelf had *received* the law of England, as it was *before* the reign of Hen. II. at the *inſtance* of the *people* of *Ireland*. So that taking theſe acts to be *declaratory* of the *common law*, they were declaratory of that law, which the Iriſh parliament had, by the inſtance of the people of Ireland, made to be the law of Ireland: and if ſo, they were *clearly bound* by their *own expreſs* conſent.

And as the acts made ſince Hen. II. and king John, did not extend to Ireland, by a *parliament* holden in *Ireland*, 10 Hen. 7. an act called Poyning's Law was made, by which the ſtatutes made in England *before* that time were by the *authority* of the parliament of Ireland *authorized*, *proved*, and

and *confirmed*, in the realm of Ireland. Now I underſtand authorizing to mean *more* than merely *accepting*; I underſtand *approving* to mean more than merely being *bound* without conſent; and I underſtand *confirmation* to mean, when a perſon, who has an intereſt in the thing, and a *competent* authority, makes that good by his aſſent and authority, which before exiſted in *fact*, but not in *right*: or to make what was voidable, as lord Coke expreſſes it, ſure and unavoidable. As where grants and leaſes of a biſhop, not warranted by the ſtatute of 32 Hen. VIII. cap. 28. and other ſtatutes, are *confirmed* by the dean and chapter. Now let us apply. Several ſtatutes had been made by the parliament of England, ſome where *Ireland* was expreſsly named, as the 2 Hen. VI. cap. 4. already cited. It was held that Ireland was not bound by them: they were *voidable* in caſe Ireland would not accept them, and void, in the mean while, as to any particular ſubject of Ireland as ſoon as he diſſented from them. To remove this difficulty, the people of Ireland, by their parliament, *confirm* theſe acts. Yes: but it is ſaid, they only confirm ſuch as did not *name Ireland expreſsly*, or in general words as all other the king's dominions; for the others were good before. It is acknowledged in Calvin's caſe, that thoſe ſtatutes which did not *name Ireland generally*, or *expreſsly*, did not *bind* Ireland, they were *no* laws as to Ireland, it is admitted on all hands. The Iriſh parliament then could not *confirm* theſe any more than I can confirm to a man who is not in poſſeſ-

ſion an eſtate which he has not. The laws of England were no laws in Ireland, unleſs they named Ireland *generally* or *expreſsly*, that at leaſt is granted. If they named Ireland, they were laws of Ireland in *fact*, but not in right; when they were confirmed by the *Iriſh* parliament they were laws of Ireland, both by fact and *right*; but they could not be confirmed, unleſs they exiſted in Ireland before they were confirmed. No laws of England exiſted in Ireland, as Iriſh laws, but thoſe which named Ireland generally or expreſsly; therefore none but theſe were confirmed; and they were confirmed to make them good when they were not good before: therefore by the plain conſtruction I think of the ſtatute 10 Henry VII. the laws of England ſince king Hen. II. and king John, expreſsly naming Ireland, were not good in Ireland till *confirmed* by the Iriſh parliament. What then is to become of the ſtatutes not naming Ireland before 10 Hen. VII. the Iriſh *approved* and received them. So they approved thoſe which had not named; they confirmed thoſe which did name them: and they, the Iriſh parliament, made both ſorts the law of Ireland. There might be a third ſort, which neither naming Ireland expreſsly, nor generally, nor being declaratory of the common law, had yet been ſent over into Ireland under the great ſeal: and theſe the Iriſh parliament *authorized*, as our parliament in England authorized, as far as they ſaw good, the canon and civil law. Thoſe *only* which named Ireland, I conceive could be properly

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confirmed; and in the reign of Hen. VII. the legal ſenſe and uſe of words was pretty nicely obſerved: it follows then, that no laws of England were then underſtood to bind Ireland, but ſuch as were authorized, approved, or confirmed, by the Iriſh parliament, which entirely agrees with the authority of the caſe of Rich. III.

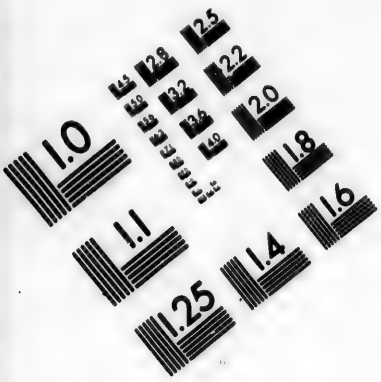
It may be ſaid, this diſcovery of the caſe of Rich. III. reaches farther than to diſallow the claim of internal taxation. I cannot help it if it does: none of the judges that I find were either impeached or removed for their opinion; though if they had been both and more under Rich. III. it would, perhaps, not have leſſened their credit much; nor have been very wonderful, when they had the ſpirit and firmneſs to give ſuch an opinion in thoſe times. Neither was it a novel opinion, for I find the ſame doctrine in the 20 Hen. VI. and held, I ſuppoſe, by the name and times by no leſs an authority than the wiſe and excellent Forteſcue; and I find there were judges of the ſame opinion in the 1 Hen. VII. Indeed, if I miſtake not, it could not be new, unleſs the conſtitution, and not only that, but reaſon and juſtice were new things. But if it ſhould be thought to affect the navigation acts, it is to be conſidered, that if the American trade is worth nothing, as it has lately been urged to be worth leſs than nothing, the navigation acts, if there were no hopes of preſerving them, are probably, in this caſe worth little. Next, if the American trade be, as I believe it, and as merchants who

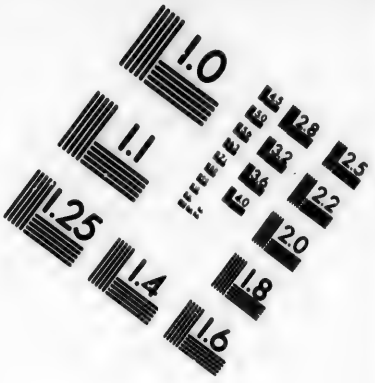
who ſhould know, and miniſtry I imagine ſtill concur to think; if it be of high value and importance, I might quote Monteſquieu, whoſe *dixit ipſe*, was once ſtrong enough, and who ſupports his opinion with great appearance, at leaſt, of reaſon, which I ſhall always think better even than the beſt authority, that an open commerce is not worſe for a ſtate than a commerce under reſtrictions: I might quote a paſſage from that learned, elegant, and diſcerning author, lord Kaimes, which, I believe, would be ſtrong indeed: I might farther ſay, that the Americans, if peace returned, would be bound by natural allegiance, not to trade with enemies at war with us, but on the contrary, to defend us and the other dominions of our common ſovereign, as they have done, and as they declare themſelves willing to do. But if war continues, no body can tell what will become not only of the navigation acts, but of the whole American trade, and to what enemies it might not be forced by reſentment and deſpair of reconciliation.

Laſtly, though I cannot ſay in ſuch a caſe, that a common error makes law and right, *communis error facit jus*; yet it makes ſomething that approaches to law and right. The Americans have acquieſced many years in the theory and practice of thoſe acts of navigation; they have very lately expreſſed, if I miſtake not, an acquieſcence in them. If we are deſirous of ſaving this part of our claims leſs burthenſome, leſs novel, leſs invidious, leſs dangerous infinitely than the reſt, to them, and at leaſt

leaſt of more colour of utility to us, let us ceaſe hoſtilities. The moſt intrepid ſtateſmen, and braveſt ſoldiers, and men of approved integrity, have cried, in both houſes, Ceaſe hoſtilities. Let ſolemn *pacta conventa* be made between the Britiſh parliament and the provinces, (I am aſſured that a gentleman of diſtinguiſhed character, and particularly connected in religious ſentiments with one of the greateſt of the colonies, looks to this as the ſureſt baſis of conciliation and amity); let us do juſtice, liberally and nobly; recogniſe their ancient charters, and ſolemnly ſecure to them their liberties (an act of dignity worthy of a Britiſh king and parliament), fixed and inviolable for ever. We may then, probably, expect, if we are ready to do this ſpeedily, that the Americans will, on theſe terms, as honourable to us as neceſſary to them, freely, ſolemnly, and effectually recognize our acts of navigation in the Britiſh dominions, and live free in love and union under one common conſtitution, and form one empire, united by the ſtrongeſt and moſt univerſal bond of mutual intereſts and affections, unſhaken from within, and by the favour of heaven and our combined ſtrength and reſolution, impregnable to all external aſſaults. This, or any way that may effectuate our common peace, liberty, and happineſs, may the Father of peace, of liberty and mankind, and of every good, our deliverer and preſerver, proſper and accompliſh.

And, perhaps, here I ſhould have cloſed, but my heart is filled with the anxiety of a ſon pleading for





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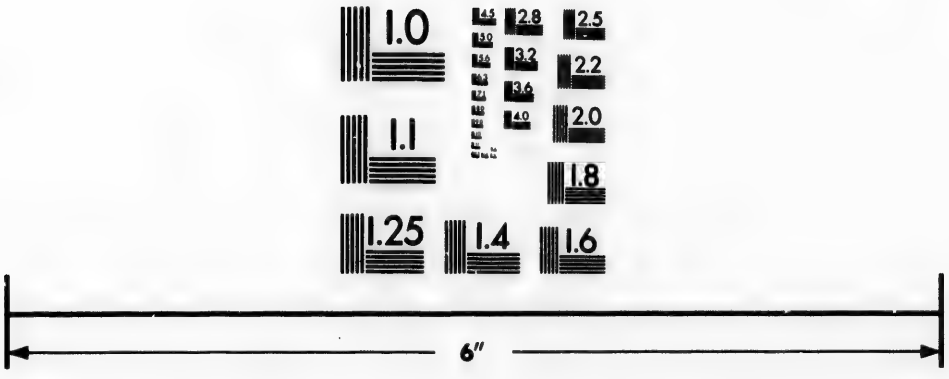

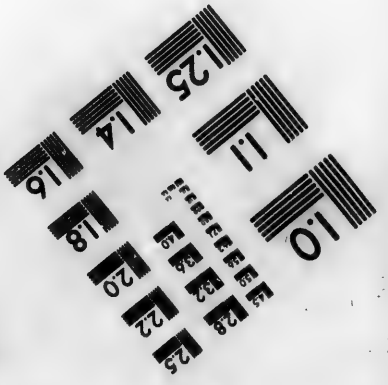

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for the life of his father. My heart would yearn over France or Spain in the ſituation in which England appears before me. Suffer me to add one caſe more, that we may judge, if we yet doubt it, what lord Holt would have ſaid upon this queſtion.

I mean to cite the *noble* opinion of that *excellent* lord chief juſtice in Aſhby and White. 6 Mod. Reports. "It is they whoſe PERSONS, ESTATES, and LIBERTIES are put in the power of the *choſen* member, that ought to have the RIGHT of *voting* for, and *chooſing* ſuch member veſted in them. And it is not *quatenus* they are a corporation, they can give this power to bind their property, but as they are particular, private, NATURAL PERSONS." Are the perſons, eſtates, and liberties of the Americans to be governed by this rule, or not?

And again, ſaith lord Holt in the ſame caſe:

"I wonder to hear it ſaid, that it is ſo ſmall a right as any injury offered to it ſhould be unpuniſhable. Is this a little thing to have the privilege of giving my vote in the election of a perſon in whoſe power my life, eſtate, and liberty lie, obſtructed?" Would he not have ſaid, Is it a little thing for my life, eſtate, and liberty to lay in the power of perſons, whom neither I, nor the community in which all theſe reſide, do, or can chooſe as the *proper* repreſentative of them. And then he ſays, V. the ſtatute of 33 and 34 Hen. VIII. and 25 Car. II. cap. 5. concerning Cheſter the one, and the other concerning Durham, and note the words *privileges* and *liberties* in them, as if he had ſaid,

Note,

Note, the legiſlature well underſtood when they made this ſtatute, that they did not *give favours*, or *indulgences*, but *declare* antecedent *privileges*, *original*, inherent, unalienable RIGHTS of the ESSENCE of FREEDOM; and therefore, the *property* and *inheritance* of Engliſhmen *every-where*. For, if not *every where*, why in Cheſter or Durham, who needed them much leſs than America: if there can be difference of leſs or greater in abſolute eſſential rights neceſſary to freedom.

And towards the end, lord Holt ſays again, "Let us conſider wherein the law conſiſts, not in particular inſtances, but in the reaſon that rules them, *Ubi eadem ratio ibi idem jus*. Weigh then the *reaſon* why Engliſhmen are not bound but by laws made by members of their own chooſing; it is not becauſe a charter has ſaid it; it is not becauſe the uſage has authoriſed it; it is even becauſe the conſtitution requires it; nay, and for a farther yet and ſtill better reaſon. If James or Charles had *aboliſhed* parliaments, we ſhould have had a *right now* to demand their reſtoration; if there had never been a parliament from that time to this. If from the creation of the world we had been always *ſlaves*, always governed without our conſent, we ſhould have had a right to inſiſt on being free. But this country hath been immemorially governed by laws of its own making; by repreſentatives of its own chooſing: it has been immemorially FREE, GREAT, and HAPPY. England has been the friend, the aſſertor, the great protectreſs of liberty, and of the rights of mankind. It is not becauſe a man

is born in London, or York, that he is to chooſe his repreſentatives; it is *privilege* and his *liberty* in Cheſter, in Durham, in Mancheſter, (for Mancheſter is in a county, and every county has, and ſends repreſentatives) in Ireland and in America. He is a man, and has a *right* to be *free:* he is an Engliſhman, and his liberty is defined, ſecured, and pledged to him by ſtatutes and charters almoſt innumerable. It is interwoven in the common law, and in the inmoſt receſſes of our wonderful conſtitution, lives in every vein and member; animates, unites, and ſuſtains the whole. To be an Engliſhman, and to be partially repreſented is inconvenient, and, in proportion as the repreſentation is defective, *unjuſt*. To be an Engliſhman, and not repreſented at all but in fiction and ſhadow, is ſomething that wants a name. By the conſtitution of the land, the commons are to ſend particular members choſen BY and FROM THEMSELVES (ſays lord Holt, in the caſe juſt now cited to PARLIAMENT; and when they are choſen, they have the full POWER and AUTHORITY of them that SENT them." Thus this oracle of the law defines the nature and authority of parliament. Are thoſe members choſen by the Americans who are choſen by and for us? Are they members or repreſentatives choſen FROM THEM, who are choſen from US HERE, at the diſtance of a thouſand leagues? And the authority of parliament being *that*, and that *only*, of thoſe who ſent them, can *any or all* of us, who ſend members, dream of an authority over America? V. 2 Salk. fol. 503, 504.

I have thus endeavoured to examine the caſes which have been thought to make againſt America: I hope it is proved, that partly they are nothing to the point; partly the opinion haſty, doubtfully reported, and not ſettled or unanimous, and partly founded upon miſtake of facts. I hope too it has been ſhewn, that the caſe of Rich. III. is *much ſtronger* than even was ſuppoſed: that it amounts to declaring Ireland not bound by an act of our parliament, in which Ireland was expreſsly named, and expreſsly intended to be bound. That in the reign of Hen. VI. it was held, not Ireland only was not bound by a grant of tenths, made by our parliament, but not even Cheſter or Durham. That the legiſlature by ſtatute of Hen. VII. called Poyning's act, conſidered the authority of the Iriſh parliament neceſſary to bind the people of Ireland: and that there is reaſon to think they thought it neceſſary, as much when Ireland was named, as when it was not named: and that the legiſlature in this acted as Hen. II. the *conqueror* of Ireland, and his ſucceſſor king John had acted. I might cite lord Hale, that Ed. I. introduced the laws of England into Scotland, gently and gradually with the good will of the people; or by the expreſs conſent of the *parliament* of *Scotland**. I might make ſimilar obſervations even farther, perhaps, if neceſſary. I have obſerved what lord Holt ſays of the importance of chooſing thoſe on whom the eſtates, lives, and liberties of a people are to

* Hiſtory of the Common Law.

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depend; that they ſhould not depend on *thoſe* whom they did not *chooſe*; that there is no human power but is limited and circumſcribed by law; and ſtill more ſtrongly by natural juſtice. I might ſpeak of the *novelty* of taxing the Americans by our parliament. I might ſpeak of the ſtrange taxes to which king William reſorted rather than tax them. Not only taxing bachelors (perhaps the moſt equitable and politic of taxes), but taxing fathers for the death of their ſons, wives for their huſbands, and raiſing himſelf ſupplies for the war with France out of the grief and calamities befallen to his ſubjects: nay, taxing *marriages* *. But he came from Holland: he knew the effects of one country taxing and legiſlating for another. The inconveniencies the people put on themſelves by their *own* legiſlature might be taken off; the inconveniencies they ſhould put on others, would, perhaps, not be felt till they were without remedy to others and to themſelves. I might ſay we have found, and are likely to find, that the Americans will give more to affection than they will yield to force. I will end by ſaying we are too *great* to be in danger of ruin but from ourſelves; but it was an advice of no bad policy, though given by an apoſtle, "If we bite and devour one another, let us take heed leſt we be conſumed." An event, which to avoid, merits all our prayers, all our anxiety, all our candour and prudence, and all our endeavours. And O may England and America unite again, never more to be divided!

* Vide Ruffhead's Appendix, 9th vol.

FINIS.